

## Be Careful When Searching Student Cell Phones, Sixth Circuit Warns

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With text messages, Tweets, Facebook posts and other digital communications so prevalent in student's lives, schools have been struggling to deal with the influx of mobile devices on campus. Last week, the Sixth U.S. Circuit Court of Appeals provided guidance as to when a school official may lawfully search a student's cell phone.

In *G.C. v. Owensboro Public Schools*, a teacher caught a student sending a text message in class. The teacher confiscated the phone, giving it to the school's assistant principal who then read four text messages on the phone "to see if there was an issue with which [she] could help." Because of the student's history of outbursts, drug abuse, and depressive tendencies, the assistant principal said she was fearful that the student would do something harmful to himself or others.

Examining the student's Fourth Amendment violation claim, the Sixth Circuit, for the first time, addressed how the U.S. Supreme Court's seminal student search case of *New Jersey v. TLO* applies to the search of a student's cell phone. Under *TLO*, a search of a student is reasonable if the search "was justified at its inception" and was "reasonably related in scope to the circumstances which justified the [search] in the first place."

Applying *TLO*, the Sixth Circuit rejected the notion that a student's improper use of his phone at school automatically allows a school official to search the phone to determine to what end the student was improperly using that phone.

"[U]sing a cell phone on school grounds does not automatically trigger an essentially unlimited right enabling a student official to search any content stored on the phone that is not related either substantively or temporally to the infraction," wrote Circuit Judge Karen Nelson Moore.

Instead of adopting this broad approach, the Sixth Circuit emphasized the need for a "fact-based approach." Thus, "[a] search is justified at its inception if there is reasonable suspicion that a search will uncover evidence of further wrongdoing or of injury to the student or another," Moore wrote. "Moreover, even assuming that a search of [a] phone were justified, the scope of the search must be tailored to the nature of the infraction and must be related to the objectives of the search." (emphasis added).

Applying this standard, the Sixth Circuit found that the assistant principal did not have a reasonable suspicion to justify the search at its inception. Though she had general background knowledge of the student's history of drug abuse and depressive tendencies, nothing in the student's use of the cell phone during class "indicated . . . that a search of the phone would reveal evidence of criminal activity, impending contravention of additional school rules, or potential harm to anyone in the school."

This decision stands as a reminder that school districts must tread carefully when searching a student's mobile device. Failing to do so could lead to liability under the Fourth Amendment, as well as under laws, including Michigan's recently enacted Internet Privacy Protection Act.